IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Revision No.221 of 2000.

Judgment reserved on:20.07.2006

Date of decision: 25.07.2006

Shiv Kumar …**Petitioner**

Versus

Gurubhagti …**Respondent**

Coram

The Hon'ble Mr.Justice Deepak Gupta, J.

Whether approved for reporting?[1]

For the Petitioner: **Mr.G.D. Verma, Senior Advocate with Mr.B.C. Verma, Advocate.**

For the Respondent: **Mr.Bhupender Gupta, Senior Advocate with Mr.Janesh Gupta, Advocate.**

Deepak Gupta, J.

This revision petition under Section 24(5) of the H.P. Urban Rent Control Act, 1987 is directed against the order of the learned Appellate Authority, Kinnaur at Rampur, dated 1.6.2000 in Civil Appeal No.7 of 1999, whereby he has allowed the appeal of the respondent-landlady and ordered the eviction of the petitioner-tenant on the grounds that the tenant is in arrears of rent and that the tenant has changed the user of the premises. The learned Appellate Authority has set aside the order of the Rent Controller,

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[1] *Whether the reporters of Local Papers may be allowed to see the judgement*?

Rampur, dismissing the eviction petition filed by the landlady.

The brief facts necessary for decision of the case are that the landlady Smt.Gurubhagti filed a petition for eviction of the tenant under Section 14 of the Rent Control Act on various grounds including the ground that the tenant was in arrears of rent and that the tenant had converted the residential premises to commercial use. Other grounds though raised, have not been pressed before me. The demised premises consist of two sets of one room with a kitchen and a bathroom and verandah each on the ground floor and first floor of the building. The landlady claimed that the rent of the premises was Rs.600/- per set per month i.e. Rs.1200/- for the two sets.

The tenant in his reply did not deny the fact that the premises in question was residential. According to the tenant, the rate of rent was Rs.600/- for both sets. He challenged the locus-standi of the respondent to file the petition on the ground that in fact the premises had been rented out to him by Shri R.D. Negi, husband of the landlady and he denied that he had changed the user of the premises from residential to commercial and it was stated that his brother-in-law, nephew and servants, were still living in the premises in question.

The parties were afforded opportunity to lead evidence. The respondent-landlady examined

herself, her husband Shri R.D. Negi and two other witnesses in support of her case. The petitioner-tenant did not lead any evidence except two documents Exs.DA and DB. The Rent Controller dismissed the petition and held that the petitioner had not changed the user of the premises and that he was not in arrears of rent. He also held that the respondent is not the landlady of the petitioner for the purpose of the eviction petition.

Aggrieved against the said order the landlady filed an appeal before the Appellate Authority, which has been allowed. Hence the present revision petition.

I have heard Shri G.D. Verma, learned Senior Advocate on behalf of the petitioner-tenant and Shri Bhupender Gupta, learned Advocate on behalf of the respondent-Landlady.

It has been urged by Shri Verma that the learned Appellate Authority has gravely erred in fixing the rent of the premises at Rs.1200/- per month, whereas from a perusal of the notice Ex.DA issued on behalf of the Landlady it was clear that the rent was Rs.600/- per month for both the sets. He next submitted that there were no pleadings with regard to the period of arrears or the amount of arrears and the pleadings were absolutely vague and that the learned lower Appellate Court has set up a new case for the Landlady. He lastly submitted that

there is no evidence to show that the tenant has changed the user of the premises in question.

On the other hand, Shri Bhupender Gupta supports the judgment of the learned lower Appellate Authority and submits that an adverse inference is required to be drawn against the tenant since he voluntarily failed to appear in the witness box.

I have given my considered view to the arguments of the learned counsel for both the parties and have gone through the record of the case. From the pleadings of the parties, it is clear that only two questions arise for the decision in this revision (1) what is the rate of rent and what are the arrears of rent and (2) Whether the tenant has changed the user of the premises?

(1) **What is the rate of rent and what are the arrears of rent?**

As far as this question is concerned, in the petition it was clearly stated that the rent is Rs.600/- per set i.e. Rs.1200/- per month for two sets. The version of the tenant is that the rent was Rs.600/- for both these sets as mentioned in the notice Ex.DA issued on behalf of the landlady and her husband. It is pertinent to mention that from the evidence it stands proved that initially the entire building in which the demised premises are situate was owned by PW-2 Shri Rameshwar Dass Negi husband of the Landlady. It was he who has let out the premises to

the tenant. In a family partition held in the year 1997 the demised premises fell to the share of the Landlady. It is the admitted case that no intimation of this family partition was ever given to the tenant. On behalf of the tenant reliance is placed only on the notice Ex.DA in which it is mentioned as follows:-

> "…….the monthly rent of Rs.600/- for both sets".

Mr.G.D.Verma has strenuously argued that the tenant is bound by her admission. The landlady has admitted that a notice was issued on her behalf at the instance of her husband. The husband, when he appeared as PW-2, was confronted with the notice and he stated that there appears to be a typing mistake in the notice. According to him, the rent of the premises was Rs.600/- per set and not Rs.600/- for both the sets. The landlady as well as her husband have stated on oath that the rent was Rs.1200/- per month. An explanation has been given as to how there was a typing mistake in the notice Ex.DA. A party can get out of an admission or statement made earlier by giving an explanation as to how the same was made. The tenant did not care to step into the witness box to counter the statement on oath made by the landlady and her husband who was previously the landlord of the premises. In my opinion, an adverse inference has to be drawn against the husband, in view of the provisions of Section 114(g) of the Evidence Act and

the law laid down by the Apex Court in ***Ishwar Bhai C.Patel alias Bachu Bhai Patel vs. Harihar Behera and another, AIR 1999 SC 1341*** and ***Vidhyadhar vs. Mankikrao and another, AIR 1999 SC 1441,*** which law has been consistently follows by this Court in number of judgments. In my considered view, the landlady has proved that the rent of the premises of both the sets was Rs.1200/- per month.

As far as arrears are concerned, there can be no manner of doubt that the pleadings were absolutely vague. The only pleading made was that the tenant was in arrears of rent. It was not specified as to since when the tenant had not paid the arrears of rent. The petition in the present case was prepared on 4th March, 1998, though it has been filed later on 20th March, 1998. On 4th March, 1998, the landlady could have claimed arrears only for the month of January, 1998 onwards. The tenant in his reply has not denied the fact that he is not in arrears of rent. All that he has stated is that cheque for the rent was sent to Shri R.D. Negi, who was the Landlord, by registered posts on 7.1.1998 and 9.3.1998, which were refused by him. It is, thus, clear even as per the tenant no rent has been paid from January, 1998 onwards. Therefore, I am of the considered view that the learned Appellate Authority has wrongly held that the tenant is in arrears of rent since Ist June, 1997. There is no proper or cogent evidence in this regard

except for the oral testimony of the landlady and her husband. In my view, the order of the learned Appellate Authority is not justified to this extent and the tenant could only be held to be in arrears of rent from Ist January, 1998 onwards, since when he has admittedly not paid any rent.

(2) **Whether the tenant has changed the user of the premises?**

With regard to this issue, I find that the landlady, her husband and two other witnesses have stated that since about one year prior to the filing of the petition the tenant is not staying in the premises in question. According to the landlady and her witnesses, the tenant has built his own house in the area of Lhasa in Rampur and has shifted there and since then he is using the demised premises only as a godown to store readymade garments and other material in which he deals in. It is argued on behalf of the tenant that no witnesses from the building or from the vicinity have been produced and further that there is nothing on record to show that the tenant does not reside in the premises any longer. In this behalf, it would be pertinent to mention that in the petition it was specifically alleged that at present nobody is occupying the premises and the tenant has been using the same only for storage of commercial goods. The tenant in his reply does not state that he is living in the premises. His only reply is that his nephew,

brother-in-law and servants are living in the premises. The tenant has not produced the nephew or the brother-in-law or any servant in evidence. From the statements of the landlady and her witnesses it is apparent that the premises let out to the tenant are being used by him only for the purpose of storage of goods. There is no material whatsoever to show that he is residing in the premises in question. Since the tenant himself has not appeared in the witness box an adverse inference has to be drawn against him with regard to this issue also.

Mr.G.D. Verma has relied upon a judgment of Single Judge of the ***Punjab & Haryana High Court in Inder Sain vs. Gian Chand, 1981(1) RLR (PB & HRy.) 78***, wherein the Court held that merely because certain goods have been placed in the premises would not be sufficient to raise the presumption that the building is being used for a purpose other than for which it was rented. In this very authority it is further stated that the position might have been different if the tenant would have ceased to occupy the premises for his residence and have totally used the premises for his business.

In the present case, there was specific allegation in the petition that the tenant was not residing in the premises. This was not denied by him, though, according to him, his relatives and servants were still residing in the premises. This authority is

not at all applicable and does not support the petitioner.

Reliance placed by Shri G.D. Verma on the another judgment of the Punjab & Haryana High Court in ***Bakshish Singh Nalwa & another vs. Harnam Singh, 1993(2) RLR (PB & HRy.) 167,*** is also misplaced. In that case also it stood proved that only a portion of the residential premises were being used for commercial purposes.

Infact, Mr. Bhupender Gupta has urged that the definition and connotation of residential and non-residential premises in the East Punjab Urban Rent Restriction Act, 1949 is totally different from the one in the H.P. Urban Rent Control Act, 1987. However, I need not go into this issue since in my opinion in this case the landlady has proved that the tenant is not residing in the premises and the premises are being used solely for commercial purpose.

Keeping in view the above discussion, the petition filed by the tenant is dismissed with costs assessed at Rs.3000/-. However, it is clarified that the petitioner-tenant is only in arrears of rent w.e.f. Ist January, 1998 onwards.

July 25, 2006 **(Deepak Gupta)**
(aks) **Judge.**